



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/812,704

03/19/2001

Charles Lewis

01-P-24995

9722

7590

04/23/2007

Jeffrey S Whittle  
Bracewell & Patterson L L P  
Suite 2900 711 Louisiana Street  
Houston, TX 77002-2781

EXAMINER

GILLIGAN, CHRISTOPHER L

ART UNIT

PAPER NUMBER

3626

MAIL DATE

DELIVERY MODE

04/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/812,704

Applicant(s)

LEWIS ET AL.

Examiner

Luke Gilligan

Art Unit

3626

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE.  
Claim(s) objected to: NONE.  
Claim(s) rejected: 1-37,39-46 and 51-56.  
Claim(s) withdrawn from consideration: NONE.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.


**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

Continuation of 3. NOTE: The amendments with respect to claim 1 specifying the step of modifying ancillary pharmacy costs management behavior would require further search and consideration. In addition, the amendments to not reduce the issues for appeal.

Continuation of 11. does NOT place the application in condition for allowance because: The remarks filed 3/22/07 substantially rehash the arguments previously addressed in the prior office action. In addition, the remarks reference the 132-Declaration filed concurrently that has not been entered after final. Additionally, the remarks also make reference to the assertion that the claims are directed to an "open" healthcare system, while the applied prior art is directed to a "closed" healthcare system. It appears that Applicants' contention is that an "open" health care system is an out-patient environment and a "closed" healthcare system is a hospital environment. However, it does not appear that any of the claims are specifically limited to an out-patient environment. Rather the claims are merely directed to physicians of a healthcare practice participating in an insurance network. Although Snail is clearly directed to a hospital environment, it appears that the reference otherwise is in the same environment as recited in the claims. See, for example, page 2 of Snail describing "economic motivation for hospital choice of physician practice organizations in forming hospital-physician supplier networks, which are subsequently used to seek managed care contracts and coordinate hospital and physician services".

Continuation of 13. Other: The Declaration filed under 37 CFR 1.132 will not be entered after final action because there is no showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented even though the same grounds of rejection had been applied in the previous two office actions.

  
C. LUKE GILLIGAN  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600